

John A. DeTore

Direct Dial: (617) 330-7144

E-mail: jdetore@rubinrudman.com

October 10, 2000

Mary L. Cottrell, Secretary

Department of Telecommunications and Energy

100 Cambridge Street, 12<sup>th</sup> floor

Boston, MA 02202

Re: Fitchburg Gas & Electric Light Company, D.T.E. 00-66

Dear Secretary Cottrell:

Pursuant to the Department of Telecommunications and Energy's ("Department") September 8, 2000 Order of Notice in the above-referenced matter, Constellation Power Source, Inc. ("Constellation") hereby submits its comments in support of Fitchburg Gas & Electric Light Company's ("FG&E") proposed increase to its standard offer retail rates. Constellation believes that FG&E's request is fully consistent with the Massachusetts Electric Restructuring Act, FG&E's approved restructuring plan, FG&E's approved tariffs, and with the terms of the Standard Transition Service ("STS") Agreement entered into between FG&E and Constellation, and approved by the Department. As discussed in greater detail below, the basis for FG&E's request to increase its retail standard offer rates is that the "fuel trigger point" encompassed in the STS agreement and included in

FG&E's approved tariffs, has been exceeded. Consequently, the terms of the STS Agreement obligate FG&E to calculate the rate for STS to reflect these increased fuel prices.

- FG&E's Request is Fully Consistent with the STS Agreement, Which Has Been Approved by the Department

As the Department is aware, Constellation is the wholesale supplier of standard offer service for 100% of FG&E's retail standard offer load for the duration of the standard offer period -- through February 28, 2005. The STS Agreement pursuant to which Constellation supplies FG&E's standard offer load requirements has been reviewed and approved by the Department

pursuant to M.G.L. c. 164, §§ 1B(b) and 94A. See, Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120, (1999).

Appendix 4 of the STS Agreement outlines two aspects of the Agreement that determine the applicability of fuel price increases. In all instances, the Customer Rate for STS (i.e., the rate billed to FG&E) is equal to a predetermined price per kilowatthour ("kwh") multiplied by a "fuel adjustment". The fuel adjustment factor is equal to 1.0 "unless the "Market Gas Price" plus "Market Oil Price" for the billing month exceeds the "Fuel Trigger Point" then in effect." Both the market gas and oil prices are tied to publicly available indices. In addition, the STS agreement specifically identifies a fuel trigger point, expressed in \$/MMBtu, for each calendar year for the term of the Agreement. Thus, there is no question as to whether the fuel trigger point has been exceeded, or how the fuel trigger point is to be determined. In light of the fact that the fuel adjustment factor and price trigger are part of the agreement as reviewed and approved by the Department, Constellation views the Department as having already determined that potential price increases attributable to the fuel trigger may be charged to FG&E. FG&E, in turn, to meet its payment obligations under the STS agreement, must collect those costs from its retail standard offer customers.

- FG&E's Request is Consistent with the Massachusetts Electric Restructuring Act

The only outstanding question with respect to FG&E's filing appears to be whether imposition of the fuel price trigger somehow conflicts with the Electric Restructuring Act. Specifically, questions have arisen as to whether fuel inflation which has resulted in the exceedance of the fuel trigger point included in the STS agreement (and applicable to other distribution companies' standard offer supplies as well) constitutes "inflation" which may be reflected in retail rates, while maintaining the mandated rate reductions imposed on distribution companies by the Electric Restructuring Act. Section 1B(e) of chapter 164 provides that average rates for all of a distribution company's customers purchasing electricity under the standard service transition rate

shall be subject to an inflation cap through the remainder of the standard offer period. The calculation and implementation of the ... inflation cap shall be subject to adjustment, review, and approval in accordance with procedures in the rules and regulations promulgated by the department, which shall require that, the economic value of the rate reduction required under this section, be maintained during the standard service transition rate period.

The statutory language clearly permits the Department discretion to determine how inflation is to be calculated for purposes of maintaining the mandated rate discounts. Constellation submits that by approving both the FG&E STS and requiring FG&E to set its retail standard offer rates at the same level as its wholesale costs, the Department has implicitly approved fuel inflation as being permissible and consistent with the Restructuring Act. See, e.g., D.T.E. 97-115/98-120, at 44 (finding FG&E Restructuring Plan to be substantially consistent with the Restructuring Act).

Even if the Department does not agree that its approval of the STS agreement has already recognized fuel inflation as permissible under G.L. c. 164, § 1B(e), the Department can and should make such a determination at this time. Clearly, the Department has the discretion to determine that extraordinary fuel price escalation is appropriately categorized as inflation, and thus permissible under the statute. Moreover, given the direct correlation between fuel inflation and wholesale electric power prices, the Department should recognize fuel inflation as being permissible under the statute.

- Approval of FG&E's Fuel Increases is Consistent with the Department's Public Policy Objectives

In approving the STS agreement between FG&E and Constellation, the Department stated a clear objective of "promoting the development of competitive generation markets in an expeditious manner." D.T.E. 97-115/98-120, at 21. On this basis, the Department directed FG&E to "implement a standard offer retail price that is equal to the price Fitchburg is paying suppliers for standard offer service." *Id.*, at 22. This directive was based in part on the Department's recognition that deferral of a retail/wholesale price differential would have a negative impact on market development. *Id.* Thus, FG&E's proposed retail standard offer rate change is also consistent with the Department's stated objectives in D.T.E. 97-115/98-120.

- Conclusion

As discussed above, FG&E's request is consistent with the terms of the STS agreement, with FG&E's tariffs, and restructuring plan, as approved by the Department. Constellation has a substantial economic interest in recovering the amounts properly due under the STS agreement. In addition, Constellation has a reasonable good faith expectation that FG&E's obligations under a contract previously reviewed by the Department will be honored. Failure to permit FG&E to abide by its contractual commitments as contemplated by the parties to the agreement could have a chilling effect on the developing competitive marketplace. Constellation appreciates the opportunity to offer its views to the Department on this important issue.

Please date stamp a copy of this letter for our messenger.

Thank you for your attention to this matter.

Respectfully submitted,

CONSTELLATION POWER SOURCE, INC.

By its attorneys,

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David Perlman, General Counsel

Kathleen Jones, Esq.

Constellation Power Source, Inc.

111 Market Place, 5<sup>th</sup> floor

Baltimore, MD 21202

-and-

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John A. DeTore

Maribeth Ladd

Rubin and Rudman LLP

50 Rowes Wharf

Boston, MA 02110

cc: Caroline O'Brien, Hearing Officer

George B. Dean, Esq.

Joseph Rogers, Esq.

Scott Mueller, Esq.

Patricia French, Esq.

Judith Silvia, Esq.

Robert F. Sydney, Esq.